

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 95

Introduced by Howard, 9.

Read first time January 8, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 sections 77-5701, 77-5723, and 77-5727, Revised Statutes
3 Cumulative Supplement, 2008; to prohibit taxpayers
4 who violate federal immigration laws from receiving
5 incentives under the act; to harmonize provisions; and to
6 repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5701, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-5701 Sections 77-5701 to 77-5735 and section 4 of this
4 act shall be known and may be cited as the Nebraska Advantage Act.

5 Sec. 2. Section 77-5723, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 77-5723 (1) In order to utilize the incentives set
8 forth in the Nebraska Advantage Act, the taxpayer shall file
9 an application, on a form developed by the Tax Commissioner,
10 requesting an agreement with the Tax Commissioner.

11 (2) The application shall contain:

12 (a) A written statement describing the plan of employment
13 and investment for a qualified business in this state;

14 (b) Sufficient documents, plans, and specifications as
15 required by the Tax Commissioner to support the plan and to define
16 a project;

17 (c) If more than one location within this state is
18 involved, sufficient documentation to show that the employment and
19 investment at different locations are interdependent parts of the
20 plan. A headquarters shall be presumed to be interdependent with
21 each other location directly controlled by such headquarters. A
22 showing that the parts of the plan would be considered parts of
23 a unitary business for corporate income tax purposes shall not
24 be sufficient to show interdependence for the purposes of this
25 subdivision;

1 (d) A nonrefundable application fee of one thousand
2 dollars for a tier 1 project, two thousand five hundred dollars for
3 a tier 2, tier 3, or tier 5 project, five thousand dollars for a
4 tier 4 project, and ten thousand dollars for a tier 6 project. The
5 fee shall be credited to the Nebraska Incentives Fund; ~~and~~

6 (e) A timetable showing the expected sales tax refunds
7 and what year they are expected to be claimed. The timetable shall
8 include both direct refunds due to investment and credits taken as
9 sales tax refunds as accurately as possible; ~~and-~~

10 (f) A certification by the president or managing officer
11 of the taxpayer that the taxpayer has not knowingly violated the
12 federal immigration law by employing aliens unauthorized to work
13 in the United States during the five years prior to the date of
14 application.

15 The application and all supporting information shall be
16 confidential except for the name of the taxpayer, the location of
17 the project, the amounts of increased employment and investment,
18 and the information required to be reported by sections 77-5731 and
19 77-5734.

20 (3) An application must be complete to establish the date
21 of the application. An application shall be considered complete
22 once it contains the items listed in subsection (2) of this
23 section, regardless of the Tax Commissioner's additional needs
24 pertaining to information or clarification in order to approve or
25 not approve the application.

1 (4) Once satisfied that the plan in the application
2 defines a project consistent with the purposes stated in the
3 Nebraska Advantage Act in one or more qualified business activities
4 within this state, that the taxpayer and the plan will qualify for
5 benefits under the act, and that the required levels of employment
6 and investment for the project will be met prior to the end of the
7 fourth year after the year in which the application was submitted
8 for a tier 1, tier 3, or tier 6 project or the end of the sixth
9 year after the year in which the application was submitted for
10 a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
11 approve the application.

12 (5) After approval, the taxpayer and the Tax Commissioner
13 shall enter into a written agreement. The taxpayer shall agree
14 to complete the project, and the Tax Commissioner, on behalf of
15 the State of Nebraska, shall designate the approved plan of the
16 taxpayer as a project and, in consideration of the taxpayer's
17 agreement, agree to allow the taxpayer to use the incentives
18 contained in the Nebraska Advantage Act. The application, and
19 all supporting documentation, to the extent approved, shall be
20 considered a part of the agreement. The agreement shall state:

21 (a) The levels of employment and investment required by
22 the act for the project;

23 (b) The time period under the act in which the required
24 levels must be met;

25 (c) The documentation the taxpayer will need to supply

1 when claiming an incentive under the act;

2 (d) The date the application was filed; and

3 (e) A requirement that the company update the Department
4 of Revenue annually on any changes in plans or circumstances which
5 affect the timetable of sales tax refunds as set out in the
6 application. If the company fails to comply with this requirement,
7 the Tax Commissioner may defer any pending sales tax refunds until
8 the company does comply.

9 (6) The incentives contained in section 77-5725 shall be
10 in lieu of the tax credits allowed by the Nebraska Advantage Rural
11 Development Act for any project. In computing credits under the
12 act, any investment or employment which is eligible for benefits
13 or used in determining benefits under the Nebraska Advantage Act
14 shall be subtracted from the increases computed for determining
15 the credits under section 77-27,188. New investment or employment
16 at a project location that results in the meeting or maintenance
17 of the employment or investment requirements, the creation of
18 credits, or refunds of taxes under the Employment and Investment
19 Growth Act shall not be considered new investment or employment
20 for purposes of the Nebraska Advantage Act. The use of carryover
21 credits under the Employment and Investment Growth Act, the Invest
22 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
23 Quality Jobs Act shall not preclude investment and employment from
24 being considered new investment or employment under the Nebraska
25 Advantage Act. The use of property tax exemptions at the project

1 under the Employment and Investment Growth Act shall not preclude
2 investment not eligible for the property tax exemption from being
3 considered new investment under the Nebraska Advantage Act.

4 (7) A taxpayer and the Tax Commissioner may enter into
5 agreements for more than one project and may include more than
6 one project in a single agreement. The projects may be either
7 sequential or concurrent. A project may involve the same location
8 as another project. No new employment or new investment shall be
9 included in more than one project for either the meeting of the
10 employment or investment requirements or the creation of credits.
11 When projects overlap and the plans do not clearly specify, then
12 the taxpayer shall specify in which project the employment or
13 investment belongs.

14 Sec. 3. Section 77-5727, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 77-5727 ~~(1)(a)~~ (1) If the taxpayer fails either to meet
17 the required levels of employment or investment for the applicable
18 project by the end of the fourth year after the end of the year
19 the application was submitted for a tier 1, tier 3, or tier 6
20 project or by the end of the sixth year after the end of the
21 year the application was submitted for a tier 2, tier 4, or tier
22 5 project or to utilize such project in a qualified business at
23 employment and investment levels at or above those required in the
24 agreement for the entire entitlement period, all or a portion of
25 the incentives set forth in the Nebraska Advantage Act shall be

1 recaptured or disallowed.

2 ~~(b)~~ (2) (a) In the case of a taxpayer who has failed to
3 meet the required levels of investment or employment within the
4 required time period, all reduction in the personal property tax
5 because of the act shall be recaptured.

6 (b) In the case of a taxpayer who has knowingly violated
7 the federal immigration law by employing aliens unauthorized to
8 work in the United States, all of the incentives set forth in the
9 Nebraska Advantage Act shall be recaptured or disallowed.

10 ~~(2)~~ (3) In the case of a taxpayer who has failed to
11 maintain the project at the required levels of employment or
12 investment for the entire entitlement period, any reduction in the
13 personal property tax, any refunds in tax allowed under subsection
14 (2) of section 77-5725, and any refunds or reduction in tax allowed
15 because of the use of a credit allowed under section 77-5725 shall
16 be partially recaptured from either the taxpayer or the owner of
17 the improvement to real estate and any carryovers of credits shall
18 be partially disallowed. One-seventh of the refunds, one-seventh
19 of the reduction in personal property tax, and one-seventh of the
20 credits used shall be recaptured and one-seventh of the remaining
21 carryovers and the last remaining year of personal property tax
22 exemption shall be disallowed for each year the taxpayer did not
23 maintain such project at or above the required levels of employment
24 or investment.

25 ~~(3)~~ (4) In the case of a taxpayer qualified under tier

1 5 who has failed to maintain the average number of equivalent
2 employees at the project at the end of the six years following the
3 year the taxpayer attained the required amount of investment, any
4 refunds in tax allowed under subdivision (2)(a) of section 77-5725
5 or any reduction in the personal property tax under section 77-5725
6 shall be partially recaptured from the taxpayer. The amount of
7 recapture shall be the total amount of refunds and reductions in
8 tax allowed for all years times the reduction in the average number
9 of equivalent employees employed at the end of the entitlement
10 period from the number of equivalent employees employed in the
11 base year divided by the number of equivalent employees employed
12 in the base year. For purposes of this subsection, the average
13 number of equivalent employees shall be calculated at the end of
14 the entitlement period by adding the number of equivalent employees
15 in the year the taxpayer attains the required level of investment
16 and each of the next following six years and dividing the result by
17 seven.

18 ~~(4)~~ (5) If the taxpayer receives any refunds or reduction
19 in tax to which the taxpayer was not entitled or which were in
20 excess of the amount to which the taxpayer was entitled, the refund
21 or reduction in tax shall be recaptured separate from any other
22 recapture otherwise required by this section. Any amount recaptured
23 under this subsection shall be excluded from the amounts subject to
24 recapture under other subsections of this section.

25 ~~(5)~~ (6) Any refunds or reduction in tax due, to the

1 extent required to be recaptured, shall be deemed to be an
2 underpayment of the tax and shall be immediately due and payable.
3 When tax benefits were received in more than one year, the tax
4 benefits received in the most recent year shall be recovered first
5 and then the benefits received in earlier years up to the extent of
6 the required recapture.

7 ~~(6)~~ (7) Any personal property tax that would have been
8 due except for the exemption allowed under the Nebraska Advantage
9 Act, to the extent it becomes due under this section, shall be
10 considered delinquent and shall be immediately due and payable to
11 the county or counties in which the property was located when
12 exempted. All amounts received by a county under this section shall
13 be allocated to each taxing unit levying taxes on tangible personal
14 property in the county in the same proportion that the levy on
15 tangible personal property of such taxing unit bears to the total
16 levy of all of such taxing units.

17 ~~(7)~~ (8) Notwithstanding any other limitations contained
18 in the laws of this state, collection of any taxes deemed to be
19 underpayments by this section shall be allowed for a period of
20 three years after the end of the entitlement period.

21 ~~(8)~~ (9) Any amounts due under this section shall be
22 recaptured notwithstanding other allowable credits and shall not be
23 subsequently refunded under any provision of the Nebraska Advantage
24 Act unless the recapture was in error.

25 ~~(9)~~ (10) The recapture required by this section shall not

1 occur if the failure to maintain the required levels of employment
2 or investment was caused by an act of God or national emergency.

3 Sec. 4. The changes made to sections 77-5723 and 77-5727
4 by this Legislative bill apply to all applications filed on or
5 after the effective date of this act. For all applications filed
6 prior to such date, the provisions of the Nebraska Advantage Act as
7 they existed immediately prior to such date apply.

8 Sec. 5. Original sections 77-5701, 77-5723, and 77-5727,
9 Revised Statutes Cumulative Supplement, 2008, are repealed.